Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200

COMMENTS OF INTEGRA TELECOM, INC.

INTEGRA TELECOM, INC.

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COMMENTS OF INTEGRA TELECOM, INC.

Integra Telecom, Inc. (Integra)[1] submits these comments in response to the Federal Communication Commission's (Commission or FCC) *Further Notice of Proposed Rulemaking* adopted November 5, 2008 by Order on Remand (FCC No. 08-262),[2] in the above-captioned matter.

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[1] Integra does business primarily in the Qwest serving territory. As a result, many of the examples referred to throughout Integra's comments refer to Qwest. The issues raised by Integra in these comments are not limited to Qwest, but apply to the other ILEC/IXCs as well.

[2] *High-Cost Universal Service Support; Universal Service Contribution Methodology; Developing a Unified Intercarrier Compensation Regime; et al*. FCC Issues Order Responding to D.C. Circuit Mandamus and Joint Board Recommended Decision, Seeks Further Comment on Comprehensive Reform.

I. Introduction and Summary

In the *ICC FNPRM*, the Commission requests comment on three specific proposals, including two alternate versions of proposals for intercarrier compensation reform and a proposal for altering the basis on which carriers contribute to the Universal Service Fund ("USF"). The Commission also seeks comment on two particular questions concerning the appropriate "additional cost" standard under Section 252(d)(2).

The net effect of adopting many of the Commission's proposed measures to revamp the current intercarrier compensation regime would be to force some carriers – local exchange carriers – and their customers to subsidize the businesses and customers of other carriers – interexchange carriers ("IXCs"). As such, the FCC's various ICC reform proposals would simply morph the "arbitrage" opportunity presently worrying the Bell Companies (now the country's largest IXCs), into an arbitrage bonanza *for* the Bell Companies. Historically, the balancing sides of the intercarrier compensation debate were incumbent local exchange carriers ("ILECs") and IXCs. Generally, ILECs and CLECs had a common interest in preserving rational revenue streams while IXCs had an interest in lowering their cost of using other carriers' networks. With the merger of the largest ILECs with the largest IXCs, the disparate but off-setting voices have merged into a chorus for reform that is nothing more than an attempt to reduce the amount the largest users of other carriers' networks pay for such access, to the obvious detriment of other LECs, especially their smaller competitors in the local exchange market – CLECs.

By Report and Order and Further Notice of Proposed Rulemaking. (Dkt No. 96-45, 96-98 , 99-200). Action by: the Commission. Adopted: 11/05/2008 by Order on Remand. (FCC No. 08-262). WCB (*"ICC FNPRM")*

To achieve its objectives, the Commission proposes to nullify a central pillar of the 1996 Telecom Act's (the "Act"): its mandate that carriers be fairly compensated for the costs associated with transporting and terminating on their network the traffic that originates on other carriers' networks. The end result will not be a fair and meaningful reform of intercarrier compensation, but rather a situation that imposes great economic harm on carriers who could not possibly make up for lost access revenues via increases solely in subscriber line charges ("SLCs"), a group that includes Integra, while simultaneously forcing such carriers to subsidize the businesses of other carriers, especially AT&T, Verizon, and Qwest. Given that the access revenues that will be lost currently enable network investment, particularly by new entrants that lack the economies of scope and scale enjoyed by the Bell Companies – and new facilities deployment has been a Commission priority since the Act was passed 12 years ago – the result of the FCC's reform proposals seems not merely contrary to other important Commission goals and objectives, but perverse.

Although the intercarrier compensation system could use some tweaks and adjustments, there is no immediate crisis forcing the Commission to act precipitously or in the ill-considered fashion that a two week comment period on a complex and game-changing set of proposals suggests. Nevertheless, if the Commission feels compelled to adopt changes to the current intercarrier compensation regime without benefit of deeper and more meaningful industry review and input on its proposals, its actions should be consistent with the following principles: 1) respect for jurisdictional lines of authority which limits the reach of any decision to interstate access traffic that clearly is subject to the FCC's jurisdiction; 2) recognition that a flash cut from one regime to another could cause massive marketplace disruptions by providing *at least* a seven-year period to transition, in equal steps across the years, from the current regime to the new regime; 3) adherence to sound economic theory and rational public policy by ensuring that adopted rates are uniform and symmetrical for termination of all interstate traffic, and not below a carrier's forward looking economic costs; 4) strict enforcement of competitive neutrality by permitting recovery of lost access revenues, by all carriers, only via regulated increases in SLCs; and, 5) a commitment to logical consistency by regulating tandem transit rates using the same forward looking cost methodology as is used for transport and termination.

With respect to USF contribution methodology changes, Integra supports measures to limit the size and growth of the fund, but believes that proposals to create a hybrid, or a "numbers" based, contribution methodology bear risks for the funding and utility of the USF, and would be impractical to administer, overly burdensome for carriers to implement, and economically unfair to certain customer classes. As such, any deviation from the current revenues-based contribution methodology would not serve the public interest.

II. The FCC's Steady Reductions in Intercarrier Compensation Rates Over the Last Decade Have Pushed Those Rates to Below Cost Levels in Many Cases

Since the opening of markets to competition with the 1996 Telecom Act, the implementation of unbundled network elements[3] ("UNEs") and the advent of competitive local exchange carriers ("CLECs"), the FCC has embarked on two regulatory paths that

[3] *First Report and Order*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, et. al., CC Docket 96-98, et. al., Adopted August 1, 1996, (FCC 96-325). ("*Local Competition First Report Order*")

have had the effect of limiting the market available to CLECs: 1) through access rate and reciprocal compensation rate reductions; and, 2) by increasing the cost of CLEC entry into local markets, through special access pricing flexibility for ILECs and the limitation of the availability of UNEs to CLECs. While the FCC's deregulatory policies have implicitly condoned ILEC charges for UNE substitute products (*i.e.*, special access) at rates multiple times *in excess* of an ILEC's economic cost, the access and reciprocal compensation rate changes now contemplated would force some carriers to charge termination rates that are multiple times *less* than economic cost. This inconsistent policy harms competition and thus harms consumers.

A. Access Charge and Reciprocal Compensation Reductions

After passage of the Telecom Act in 1996, local markets were opened to competition and carriers began planning entry into the newly opened market. At that time, terminating interstate access rates were 2.85 cents per minute.[4] Certainly carriers anticipated that access rates would change to some extent, as access reform was a mandate of the 1996 Telecom Act and were quickly reduced. Shortly after the Telecom Act became law, the FCC implemented its 1997 Access Reform Order which significantly altered how access charges were applied by removing non-traffic sensitive costs, such as carrier common line recovery, from per minute rates.[5] By the second half of 1998 per minute terminating interstate access rates were 1.19 cents per minute.

[4] *Universal Service Monitoring Report*, CC Docket No. 98-202, 2007(" *Monitoring Report*"), Table 7.12, Interstate Per-Minute Access Charges

[5] *First Report and Order*, In the Matter of Access Charge Reform; et. al,, CC Docket No. 96-262, et. al., Adopted May 7, 1997 (FCC 97-158), ("*Access Charge Reform Order*"), ¶ 6.

However, though access rates were lower, starting January 1, 1998, local carriers were able to charge interexchange carriers a per month PICC charge.[6]

When carriers consider entering the local telecommunications market they undertake a business analysis that considers the cost of entering the market with the expected revenue. It would be irrational for a carrier to ignore a significant source of revenue, such as end user rates and access revenue, when making the market entry decision. Certainly, predictive power is nowhere near perfect, but costs and revenues had some predictability as the FCC laid out the tenets of reform in its three initial orders implementing the 1996 Telecom Act.[7] The principles contained in these orders, which simply implemented the provisions of the 1996 Telecom Act, were (1) to attempt to rely on markets to set rates, wherever possible; and, (2) to rely upon economic cost[8] as the basis for rates where markets failed to function.[9]

This is significant, because when Integra installed its first switches,[10] its calculus factored in whether it could reasonably compete given the costs it would face and the revenues it could generate. What could not have been anticipated was that the FCC would undertake a series of actions that would significantly move away from the two principles outlined above and instead methodically reduce revenue opportunities

[6] The residential and single line business PICC were eliminated in 2000. The multiline business PICC has declined from $2.52 per pre-subscribed line in 6/30/1998 to $0.23 per pre-subscribed line in 6-30/2007.

[7] These three areas, local competition, universal service and access charges were referred to as the "Competition Trilogy." *Access Charge Reform Order*, ¶¶ 1-3.

[8] The calculation of a carrier's economic cost was detailed in the Total Element Long Run Incremental Cost ("TELRIC") standard.

[9] For example see *Access Charge Reform Order*, ¶ 42.

[10] Integra installed its first switching in 1998.

available to competing local exchange carriers or significantly increase the costs these carriers face.

The FCC's *CALLS Order*[11] did not immediately affect CLECs. The *Order* made into law a deal the largest IXCs made with the largest local carriers.[12] In exchange for further access reductions, large local carriers were allowed to make up lost revenue through an increase in subscriber line charges and the universal service fund.[13] As a result of the CALLS order, access rates for the large price-cap ILECs were transitioned to $0.0055 per minute.[14]

The *CALLS Order* did not undertake an explicit review of implicit subsidies, nor of economic cost, but instead relied upon a settlement proposed by the largest telecommunications carriers in the country. CLECs generally were not part of the CALLS proposal and the proposal did not specifically apply to CLECs. Though the FCC indicated that it would look at the reasonableness of CLEC access rates,[15] CLECs had no

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[11] The *CALLS Order* which focused on price-cap ILECs was followed by the MAG plan in 2001 which focused on rate of return carriers.

[12] *Sixth Report and Order in Docket Nos. CC 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45,* In the Matter of Access Charge Reform, et. al., Docket No. CC 96-262, et. al., Adopted May 31, 2000 (FCC 00-193), *CALLS Order*, ¶. 29. The order applies to price cap LECs. "In this Order, we revise the rules that govern the provision of interstate access services by those incumbent local exchange carriers (ILECs) subject to price cap regulation (collectively, "price cap LECs")…"

[13] Moving access revenue into Universal Service is a profitable move for ILECs as universal service funds have traditionally been predominately available only to ILECs. The ILECs have incentives to move money that is potentially available to competitors into a fund that is more difficult for a competitor to obtain access to. The FCC's recent decision to cap CLECs' ability to collect universal service (*Identical Support NPRM*) and its proposal in the *ICC FNPRM* to reduce CLECs' ability to collect universal service (see Appendix A, ¶ 51), further the ILECs' goals of protecting this revenue stream.

[14] *CALLS Order*, ¶ 162.

[15] *CALLS Order,* ¶ 33.

reason to believe the settlement rates, with make whole provisions for the ILECs (not CLECs) would be imposed upon CLECs.[16] This is especially true given that the rates produced by the CALLS order were not based on a specific investigation of implicit subsidies, and were not based on the economic cost of any particular carrier, but were instead the result of a settlement between the large industry players.[17]

Nevertheless, in its *CLEC Access Charge Order* in 2001, the FCC imposed the arrangement the largest carriers made amongst themselves on CLECs who had no role in developing the terms of that settlement.[18] At this time, CLECs who found this rate to be significantly below their cost at least had access to unbundled switching from the ILEC, a service that was provided by the ILEC at rates based on economic cost. Unbundled switching includes the termination functions that are a part of interstate access. This avenue of relief however, was short lived as the FCC eliminated access to ILEC unbundled switching as part of its Triennial Review Remand Order ("TRRO") in 2004.[19]

The FCC took additional action to limit what CLECs could collect in interstate access in February, 2008.[20] Now, the FCC further circumscribed CLECs' ability to recover their costs by limiting the circumstances under which a CLEC could collect the

[16] Further, even if these rates were applied to CLECs, carriers under the CALLS proposal were supposed to have the option of opting out of the CALLS rates and having rates set on forward looking economic cost instead. *CALLS Order*, ¶ 29.

[17] *CALLS Order*, ¶ 48.

[18] *CLCE Access Charge Order*, ¶ 2.

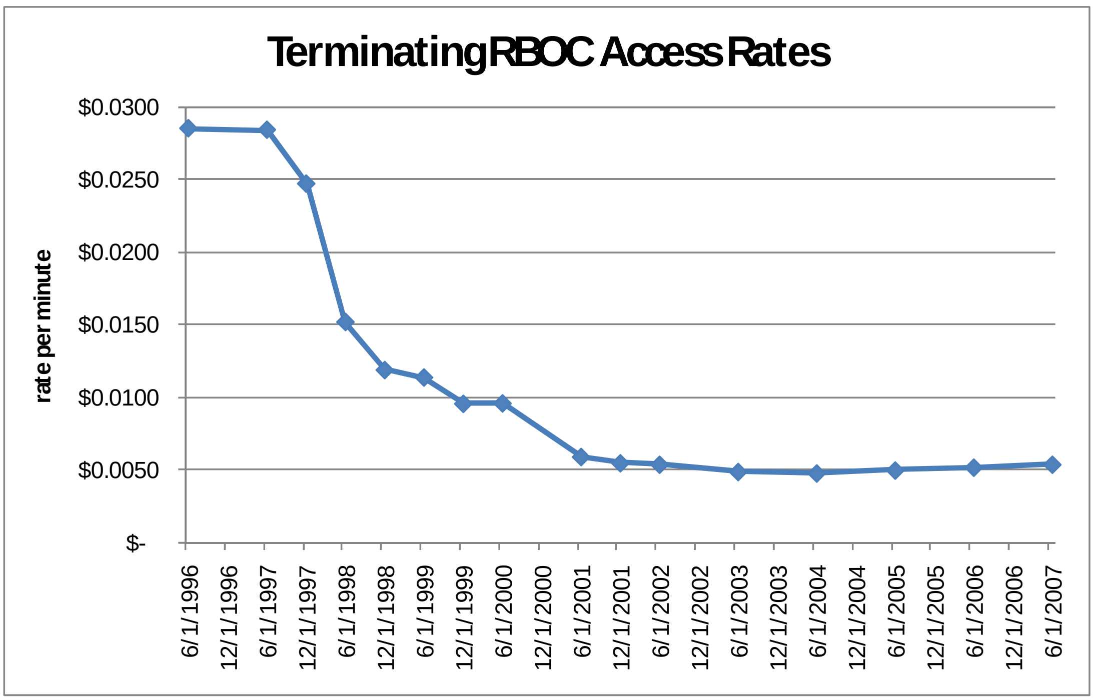
[19] *Order on Remand*, In the Matter of Unbundled Access to Network Elements, et. al., WC Docket No. 04-313 et. al., Adopted December 15, 2004, (FCC 04-290), ("*Triennial Review Remand Order*"), ¶ 5.

[20] Order, In the Matter of Access Charge Reform, et. al., CC Docket No. 96-262, Adopted February 12, 2008, (FCC 08-49), ("*Order on Prairie Wave and Cox Petition*").

full benchmark rate.[21] The FCC also cut back the ability of carriers to collect reciprocal compensation with its ISP order and the establishment of $0.0007 in 2001 for ISP-bound traffic.[22]

The chart below shows the estimated terminating RBOC interstate access rate from 1996 to the present. As can be seen in the chart, ILEC access rates are significantly lower today than they were when most CLECs were entering local markets 12 years ago. This is also true for CLEC access rates as a result of the FCC actions described above.

Chart 1: Terminating RBOC Interstate Access Rates



[21] *Order on Prairie Wave and Cox Petition*, ¶ 25.

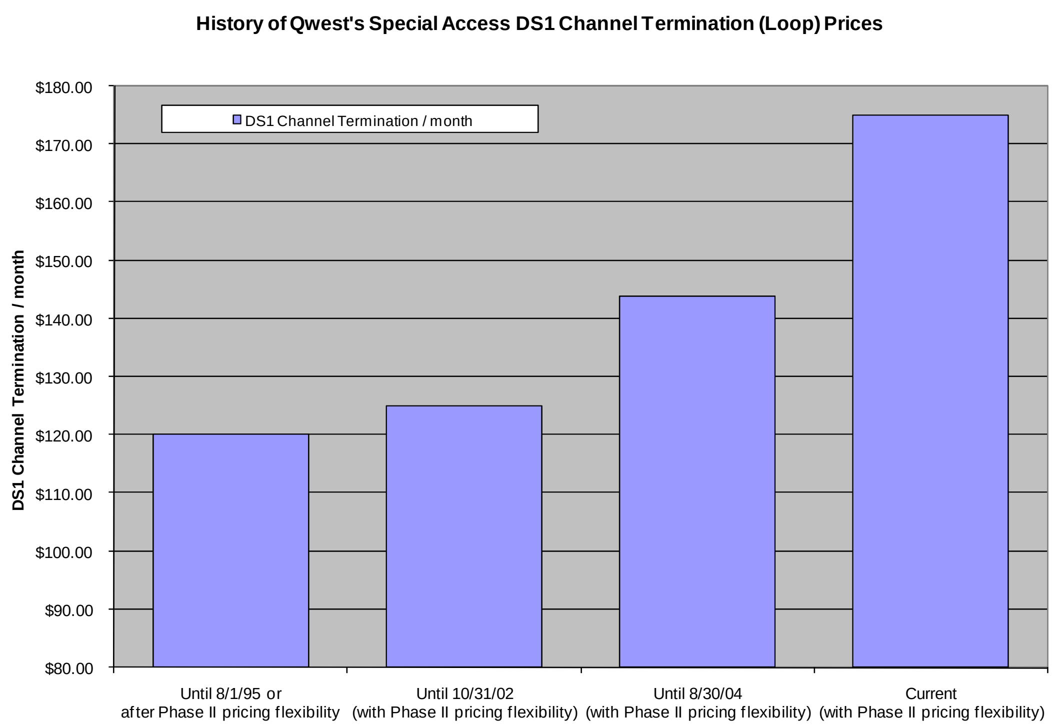
[22] *Order on Remand and Report and Order*, In the Matter of Intercarrier Compensation for ISP Bound Traffic, et. al., CC Docket No. 99-68, et. al., Adopted April 18, 2001, (FCC 01-131), ("*Intercarrier Compensation for ISP Bound Traffic*"), ¶ 8.

B. ILEC Behavior in the Face of Deregulation

The FCC has stated its preference for market-based, rather than regulatory, solutions on many occasions. For example, that preference was the Commission's stated rationale for granting special access pricing flexibility to the ILECs in 1999.[23] After pricing flexibility, which was granted with the presumption that competition would constrain special access prices, the ILECs methodically raised private line rates.

The chart below shows the history of Qwest's DS1 channel termination pricing after Qwest was granted pricing flexibility.

Chart 2: History of Qwest's Special Access DS1 Channel Termination Prices



[23] Fifth Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Price Cap Performance Review for Local Exchange Carriers, et. al., CC Docket No. 94-1, et. al., adopted August 5,

When the FCC eliminated unbundled switching as a Section 251 network element under the Act, citing the availability of competitive alternatives and the Commission's preference for market forces,[24] ILECs promptly raised wholesale switching costs. For example, Qwest phased in increases in its unbundled switching costs that resulted in rates more than 150 percent over forward looking economic cost. The table below shows the total wholesale switching cost,[25] as offered by Qwest, before and after the elimination of UNE switching.

Table 1: Wholesale Switch Cost Comparison

Wholesale Switch Cost Comparison			
State	**UNE-P Monthly Switch Costs**	**QPP Monthly Switch Costs**	**Percent Increase**
AZ	$4.23	$11.19	165%
CO	$3.91	$10.87	178%
ID	$3.79	$8.66	129%
IA	$3.85	$9.43	145%
MN	$3.65	$10.61	191%
MT	$4.29	$9.16	113%
NE	$4.82	$11.78	144%
NM	$2.76	$6.94	152%
ND	$3.87	$10.83	180%
OR	$3.52	$7.70	119%
SD	$3.78	$10.74	184%
UT	$4.41	$9.28	111%
WA	$3.31	$10.27	210%
WY	$4.60	$6.69	45%
Average	**$3.82**	**$9.99**	**162%**

1999, (FCC 99-206), (*Pricing Flexibility Order*").
(http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1999/fcc99206.pdf).

[24] *TRRO*, ¶ 199.

[25] Total switching costs include the switch port, local usage and shared transport. The numbers in the table assume 900 minutes of originating local traffic and 250 minutes of originating toll traffic.

In addition, when ILECs no longer were required to offer DS1 and DS3 unbundled transport, and DS1 and DS3 unbundled loops if certain conditions intended to serve as a proxy for competition that would limit price increases were met, ILECs promptly raised prices for these facilities. For example, Qwest raised its rates for DS1 loops between 60 and 300 percent when it demanded special access pricing in place of de-listed UNEs.[26] Put simply, when the FCC deregulates ILEC services, the ILECs raise their rates for such services by multiple times their forward looking economic cost.[27] Whle the FCC apparently fails to detect ILEC arbitrage when ILECs double and triple wholesale rates, it is nonetheless intent on eliminating what these same ILECs proclaim as harmful arbitrage by establishing rates for reciprocal compensation that are many times *below* forward looking economic cost.

When the FCC deregulated ILEC pricing of certain facilities, ILECs lost no time in raising prices to levels up to 300 percent above forward looking economic cost. It is puzzling why the FCC believes that ILEC rates up to four times forward looking economic cost are reasonable, while interstate access rates that are less than 40 percent above the ILECs' forward-looking economic cost constitute an arbitrage problem. The table below shows Qwest's reciprocal compensation rate elements and their average across the Qwest region.

[26] In Minnesota the DS1 loop rates increased by 314%. In Washington the DS1 loop rates increased by 63%.

[27] Integra does not agree that rates that are set multiples above a company's forward looking economic cost are just and reasonable, but simply points out that the FCC's inaction with regard to ILEC "deregulated" pricing has allowed ILECs to charge these excessive rates.

Table 2: Reciprocal Compensation Rates in the Qwest Territory

State	Recip Comp (LS+TS+TT)	Tandem Switching (TS)	Tandem Transport (TT)	Local Switching (LS)
Arizona	$ 0.01099	$ 0.000500	$ 0.000790	$ 0.009700
Colorado	$ 0.00272	$ 0.000690	$ 0.000422	$ 0.001610
Idaho	$ 0.00275	$ 0.000690	$ 0.000713	$ 0.001343
Iowa	$ 0.00359	$ 0.000690	$ 0.001340	$ 0.001558
Minnesota	$ 0.00164	$ 0.001120	$ 0.000520	$ -
Montana	$ 0.00351	$ 0.000690	$ 0.001244	$ 0.001574
Nebraska	$ 0.00271	$ 0.000690	$ 0.000765	$ 0.001260
New Mexico	$ 0.00372	$ 0.000853	$ 0.000821	$ 0.002046
North Dakota	$ 0.00360	$ 0.002100	$ 0.000018	$ 0.001482
Oregon	$ 0.00246	$ 0.000690	$ 0.000435	$ 0.001330
South Dakota	$ 0.00189	$ 0.000690	$ 0.000496	$ 0.000702
Utah	$ 0.00299	$ 0.000686	$ 0.000673	$ 0.001626
Washington	$ 0.00222	$ 0.000690	$ 0.000350	$ 0.001178
Wyoming	$ 0.00229	$ 0.000690	$ 0.000681	$ 0.000920
Weighted Average	$ 0.00392			

The average reciprocal compensation rate in the Qwest territory is $0.0040 per minute. This is roughly comparable to the CALLS benchmark rate of $0.0055. That fact begs the question as to why there is a need to alter interstate access rates at all? The current interstate terminating rates are within 40 percent of their forward-looking economic cost. Why does the FCC consider it "arbitrage," and thus a problem requiring regulatory action, when a CLEC's access rates exceed the RBOC's economic cost, but consider it "market based pricing" when an RBOC's private line services or 271 unbundled switching prices significantly exceed economic cost?

III. Principles for Arriving at a Reasonable Rate for Services Rendered

As an initial matter, Integra notes that the compressed timeframe for submitting comments in this proceeding simply does not provide an adequate opportunity to review, analyze and comment upon the entire number and variety of the intercarrier compensation proposals discussed in Appendix A or Appendix C of the *ICC FNPRM*. As such, we are reduced to presenting the Commission with our initial impressions and a certain amount of speculation regarding the proposals.

Intercarrier compensation is important to Integra. It represents not merely revenues, but payment for services rendered. Integra's business plan is sensitive both to the costs associated with call termination, and to the revenues received from providing that service to other carriers. It bears emphasizing that, under §252(d)(2)(A)(ii) of the Act, carriers are lawfully entitled to recover "a reasonable approximation of the additional costs of terminating" calls on their networks. And, although the Commission may not assign to them the weight that Integra does, there are very real costs associated with the provision of transport and termination of calls on our network.

Despite the oft-stated notion that the intercarrier compensation regime is in need of an overhaul, the Commission cannot use that rationale to deny Integra its statutory right to be compensated appropriately for providing those services to other carriers. A "one size fits all" intercarrier compensation solution fails to take into account Integra's reasonable need to support its network, or its reasonable expectation of appropriate compensation for services rendered, and would cause great harm to the company and to its customers.

A. The FCC Lacks Jurisdiction Over Intrastate Access Rates

Integra believes that any adjustments the Commission would make to the current intercarrier compensation regime must respect jurisdictional lines of authority by limiting any changes in its ICC scheme to interstate access traffic that clearly is subject to the

FCC's jurisdiction. Since Section 152(b) of the Act limits the Commission's jurisdiction, exempting from it authority over charges for "intrastate communications services," moving intrastate access rates to interstate access rate levels, for any period of time, would be overreaching its jurisdictional authority. Nor is it within the Commission's statutory authority to preempt state jurisdiction over intrastate access charges.[28] Accordingly, the Commission must limit any changes it would make to the intercarrier compensation regime to interstate access charges *only*.

Nor is it within the Commission's jurisdiction to apply Section 251(b)(5) and Section 252(b)(2) to the termination of interexchange traffic. Those sections of the Act apply to the transport *and* termination of traffic, not to stand-alone transport. Reciprocal compensation applies *only* to local traffic wherein both carriers are terminating traffic, not to arrangements in which a carrier is transporting interexchange traffic to another local calling area. Section 251 is designed to facilitate local competition, and applies only to the *exchange* of *local* traffic between two carriers, both of which must be traffic terminators. Applying reciprocal compensation concepts, and rates, to the termination of *long distance* traffic carried by *interexchange* carriers is inconsistent with the purpose of the statute and flatly contravenes its language.

B. Steps for Achieving a Blended Rate

If the FCC is intent on asserting jurisdiction over all terminating rates (intra- and interstate) and establishing a single termination rate in order to address many of the

[28] *See* 47 USC §§ 152(b), 223-227, and 251(d)(3) (1996).

regulatory arbitrage issues noted by the Commission,[29] then the first step should be to require each carrier to determine a revenue neutral average termination rate based on the various jurisdictional terminating traffic rates and minutes (i.e. interstate access, intrastate access, reciprocal compensation and ISP traffic). Once each carrier has established an average rate many of the arbitrage issues identified by the FCC will be eliminated. For example, there would be no benefit to a carrier of hiding the jurisdictional nature of traffic in order to obtain one rate over another as all terminating rates for all jurisdictions would be identical. Further, knowing each carrier's average uniform terminating rate will provide information to the Commission regarding how these rates compare across carriers, how these rates compare to economic cost, and the type of transition plan that will best achieve the FCC's policy goals without unduly harming carriers who are forced to lower their terminating rates under a transition plan.

If the FCC subsequently intends to alter a carrier's average termination rate, then the Commission must adhere to sound economic theory and rational public policy by adopting a rate based upon forward looking economic costs. Short run marginal costs do not accurately reflect the cost structure of the industry and would result in below cost rates that would further exacerbate the Commission's concern regarding rate arbitrage by encouraging carriers to find customers with disproportionately large amounts of outbound traffic. Below cost termination rates also would discourage facilities investment by not allowing carriers to fully recover the costs of providing facilities-based services. Imposing a below cost termination rate on CLECs also would result in undesirable and

[29] *ICC FNPRM*, Appendix A ¶¶ 178- 185.

uneconomic effects on CLEC businesses. For instance, below cost terminating rates would require CLECs to subsidize interexchange carrier businesses by shifting the unrecovered costs of terminating interexchange traffic to our local end user customers.

Further, CLECs that currently purchase long distance service from IXCs at commercially negotiated rates would be caught in a price squeeze, forced to charge those same IXCs below cost rates for termination services, but paying them for long distance services that do not reflect any of the cost savings associated with the below cost terminating rates CLECs would be allowed to charge those same IXCs.[30] Without some mandated reduction in IXC wholesale or retail long distance rates, all the benefits of Commission mandated reductions in terminating access rates inure to the IXCs, and all of the detriments accrue to the local exchange carriers. For the vertically integrated behemoths, AT&T and Verizon, such a result could well be an economic zero sum game. For the rest of the local exchange industry, it could be an economic death knell.

Integra submits that there is no reason for the FCC to develop a new cost standard. Forward looking economic cost, as has been implemented by the TELRIC cost standard, is widely understood and used by carriers and State Commission's throughout the country; in addition it has survived multiple litigation attacks. Further, it would be inappropriate to set access rates based on a sub-TELRIC standard in order to eliminate

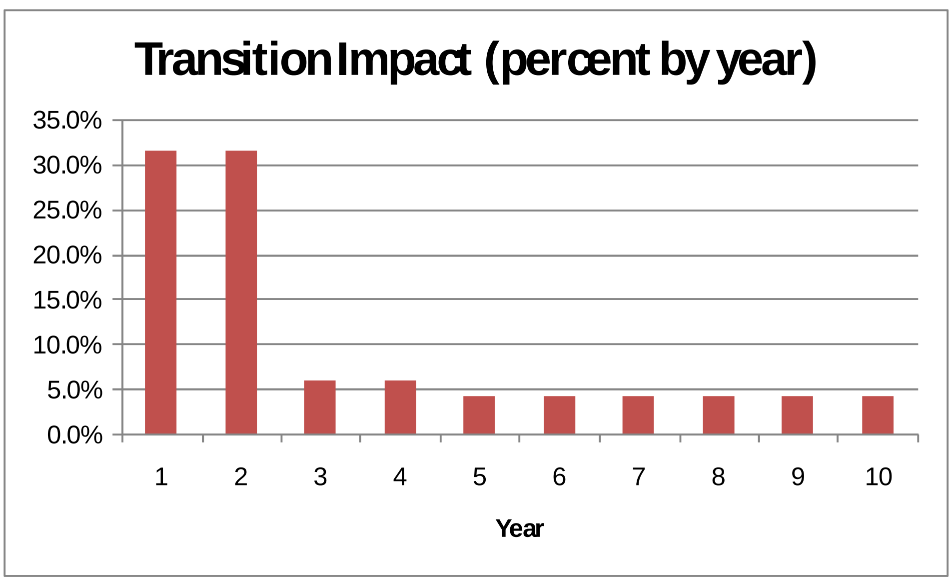
[30] Many CLECs have wholesale long distance contracts with LD providers. These contracts do not necessarily automatically change the rates that a carrier would pay when there is a change in terminating access rates. As a result, carriers need an opportunity to renegotiate these contracts, otherwise, as noted, LD providers would receive a windfall until a reduction in terminating access rates and a renegotiation of wholesale LD contracts occurred. During the CALLS order IXCs pledged to flow through any access reductions to rates charged by IXCs. *CALLS Order*, ¶ 152. There has been no such pledge in this docket.

opportunities for arbitrage, while allowing ILECs to charge rates multiple times above TELRIC under the Commission's just and reasonable standard.

C. Front-End Loading Access Rate Reductions in a "Transition Period" is Bad Public Policy and Would Lead to Economic Dislocation

As set out in the *ICC FNPRM*, the Commission currently intends a long "glide path" toward dramatically lower, unified, interstate and intrastate access but inexplicably would front end load the downward rate pressure.[31] However, the staged method of changing terminating rates under the FCC's current proposals results in a transition that is anything but gradual. The impacts of the proposed reform, in fact, are heavily skewed to the first two years of the proposed transition period. The chart below shows the estimated impact of the Commission's plan on terminating revenue for Integra Telecom.

Chart 3: Transition Impact



[31] *ICC FNPRM*, ¶ 192.

Under the FCC's plan, almost two-thirds of the total reduction in terminating rates occurs in the first two years as a result of the two year transition of intrastate rates to interstate rates. An additional eleven (11) percent of the reduction comes in the next phase as rates are transitioned to the rates established based on forward-looking economic cost (i.e. the TELRIC reciprocal compensation rates). Quite simply, such a swift and steep decline in terminating access rates would have severe adverse economic consequences for Integra and the competitive telecom industry. On the other hand, by providing *at least* a seven year period to transition from the current regime to the proposed new regime, and flattening out the downward curve such that access rates declined in equal increments over the transition period, the Commission could allow the negative impact of its proposed rate reductions to be better factored into CLEC business plans and the disruption thereby to be mitigated.

D. All Carriers Should Pay Terminating Access

If the FCC establishes a uniform rate for terminating traffic, it should clarify that all carriers are required to pay that rate unless alternative arrangements are negotiated between the carriers exchanging traffic. As the FCC has noted, IXCs have been known to refuse to pay their bills when they contain rates that the IXC does not like.[32] In addition, some wireless carriers have refused to negotiate reciprocal compensation agreements.

[32] *CLEC Access Charge Order*, ¶. 23.

E. Bill and Keep Should be on Option, not a Mandate

Carriers enter into bill and keep arrangements, not because the cost of terminating traffic is negligible, but because traffic flows and terminating rates between carriers are similar, such that the cost of preparing bills, including the cost of obtaining call records in order to bill, outweighs any net benefit from billing. Integra has voluntary bill and keep arrangements with Qwest for the exchange of local traffic for many of its entities. Bill and keep arrangements are a result of market forces, not regulatory mandates. The FCC's pricing proposal establishes termination rates significantly below their forward-looking economic cost, and would undermine market forces by, in effect, forcing CLECs into bill and keep arrangements because the price that can be charged for terminating calls would be less than the cost of billing for them. Interstate access rates are fairly uniform as a result of the *CALLS Order* and the *CLEC Access Charge Order* which established a benchmark rate of $0.0055 for the largest price cap LECs. Since the largest IXCs have merged with the largest terminating carriers, you would expect incentives for bill and keep arrangements for the termination of interstate traffic. The fact that these arrangements do not widely exist tells us that it is not in carriers' interest to enter into these agreements. The FCC should not choose its rate policies to dictate outcomes that the market would not find beneficial.

F. Transit and Category 11 Call Records

Qwest has recommended that the FCC explicitly exclude transit traffic from intercarrier compensation reform.[33] This is because Qwest, along with other ILECs, in

[33] See Qwest's Ex Parte filed on October 23, 2008, pp. 2 and 8. (http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520177917).

many cases has a near monopoly with respect to the provision of transit traffic and seek to benefit by charging rates significantly in excess of cost. Transit consists of tandem switching and tandem transport, which are also components of intercarrier compensation. Qwest proposes to charge carriers transit rates of $0.0045,[34] which is on average 325% of the corresponding rate elements established based on Qwest's economic cost.[35]

In contrast, Qwest supports a rate of $0.0007[36] for terminating intercarrier compensation. Qwest proposes a unified rate to minimize "arbitrage problems that plague the current regime."[37] While Qwest claims to want to eliminate arbitrage for terminating access, Qwest simultaneously proposes to solidify its ability to engage in arbitrage for transiting services. In contrast to the 325% of cost that Qwest proposes to charge where it has significant monopoly power, the $0.0007 rate is 18% of economic cost for reciprocal compensation.[38]

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[34] See Qwest's Negotiations Template Exhibit A (http://www.qwest.com/wholesale/clecs/sgatswireline.html). See also *In the Matter of Frontier Communications of Minnesota, Inc. and Citizens Telecommunications Company of Minnesota LLC (collectively "Frontier") for Immediate Relief Against Qwest Corporation*, MPUC Docket No. P-407,405,421/C-08-1056.

[35] See Qwest's SGAT Exhibit As (http://www.qwest.com/about/policy/sgats/). The rates from the SGAT are contained in Table 2: Reciprocal Compensation Rates in the Qwest Territory.

[36] Qwest's Ex Parte filed on October 23, 2008, p. 4.

[37] Qwest's Ex Parte filed on October 23, 2008, p. 3.

[38] The transiting rate elements are subcategories of the reciprocal compensation rate elements. These rates for local traffic have historically been set based on forward looking economic cost. This is another example where the ILEC wishes to charge multiple times in excess of economic cost where they have arbitrage opportunities, but wish to pay multiple times less than economic cost where they do not.

The table below shows the rates for the reciprocal compensation rate elements contained in Qwest's rate sheets along with the weighted average[39] rate in the Qwest region. In addition, the table includes the category 11 rates charged by Qwest, which are based on forward-looking economic cost.

Table 3: Transiting Rate Elements in the Qwest Territory

State	Transit (TS+TT)	Tandem Switching (TS)	Tandem Transport (TT)
Arizona	$ 0.00129	$ 0.000500	$ 0.000790
Colorado	$ 0.00111	$ 0.000690	$ 0.000422
Idaho	$ 0.00140	$ 0.000690	$ 0.000713
Iowa	$ 0.00203	$ 0.000690	$ 0.001340
Minnesota	$ 0.00164	$ 0.001120	$ 0.000520
Montana	$ 0.00193	$ 0.000690	$ 0.001244
Nebraska	$ 0.00145	$ 0.000690	$ 0.000765
New Mexico	$ 0.00167	$ 0.000853	$ 0.000821
North Dakota	$ 0.00212	$ 0.002100	$ 0.000018
Oregon	$ 0.00113	$ 0.000690	$ 0.000435
South Dakota	$ 0.00119	$ 0.000690	$ 0.000496
Utah	$ 0.00136	$ 0.000686	$ 0.000673
Washington	$ 0.00104	$ 0.000690	$ 0.000350
Wyoming	$ 0.00137	$ 0.000690	$ 0.000681
Weighted Average	$ 0.00138		

In addition to transit rates that significantly exceed forward-looking economic cost[40] Qwest is proposing to charge $0.0025 per record for category 11 records. CLECs (and other carriers) purchase these call detail records from the transiting provider in order to properly bill carriers for the traffic that is terminated on their network. Qwest's

[39] The weights are December 31, 2007 End User Switched Access lines as contained in Table 7 of the Local Telephone Competition Report (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-285509A1.pdf).

[40] Qwest's proposed transit rates exceed to an even greater degree the rates that would be produced by the FCC's new cost methodology to be applied to intercarrier compensation.

proposed price is almost 3.5 times $0.0007 termination rate. This means that it if the FCC were to establish $0.0007 (or something less) as the terminating rate for all traffic it would cost a carrier more to purchase a record than it would receive to bill for a call for all calls less than 3.5 minutes. Since Integra's end users average long distance call is approximately two minutes, Qwest's proposed rates would force Integra to stop billing for terminating calls where Integra needs to purchase call detail records from Qwest.

Whatever actions the Commission takes to change the intercarrier compensation regime it should take similar actions with respect to transiting services provided by carriers such as Qwest. The FCC should not deprive carriers of cost-based compensation for terminating access services, while at the same time allowing the ILECs to exploit their dominant position as a transiting provider.

IV. <u>Current Proposals to Reform the USF Contribution Mechanism, and the Fund Itself, are Flawed and Would Have Dramatic Anti-Competitive, and Other Unintended, Consequences</u>

As with the entirety of the *ICC FNPRM* and each of its constituent parts, Integra notes that the Commission simply has not allowed parties enough time to explore all of the complexities and potential consequences of the USF reform proposals embedded in Appendix A or Appendix C of the *ICC FNPRM*, or contained in the narrower USF reform proposal in Appendix B of the *ICC FNPRM*, nor has Integra had adequate opportunity to run the various reform scenarios against its billing and IT systems to determine the full ramifications on its business and on its customer base that such reforms likely represent. As such, we are reduced to presenting the Commission with our initial impressions and a certain amount of conjecture regarding the three proposals. Beyond the filing of these Comments, Integra will continue to analyze the Commissions USF reform proposals and will provide further input as appropriate.

Based on our initial review, Integra believes that the Commission should reject all hybrid numbers-and-connections, or hybrid numbers-and-revenues proposals as overly burdensome, and too administratively difficult for carriers to implement. If the yardstick the Commission uses for meaningful reform of the USF contribution methodology is simplicity and cost effectiveness,[41] any hybrid system fails to measure up. For instance, a hybrid numbers-revenues based system likely would require providers to modify their accounting practices, and augment their billing and IT resources to identify end users by type, and to appropriately assess contributions, while maintaining their current practices and systems for tracking revenues. Retooling systems and operations alone could be expensive and time consuming, and longer term maintenance and administration of such a hybrid system likely also would be more expensive, and more error prone, for all carriers, than the current revenues-only mechanism, with which carriers have the benefit of years of experience and compliance.

A hybrid numbers-connections system likely would be no less burdensome or expensive to switch over to, or to operate under, than a numbers-revenues mechanism, nor would it be any more foolproof – requiring similar modifications to carrier systems, and no fewer calculation and assessment complexities. Beyond the cost to carriers entailed by the implementation and maintenance of such hybrid contribution mechanisms, the Commission also must weigh the extent to which any new contribution

[41] *ICC FNPRM* at Appendix B, ¶¶ 53-61.

mechanism will create additional arbitrage opportunities and compliance issues. It also must weigh the attendant costs and difficulty of regulatory monitoring for the Commission, as well as the burden that such activities could place on the Universal Service Fund ("Fund") itself – and the uncertainty inherent in what at this point amounts to mere conjecture about the impact of such mechanisms on the ultimate size of the Fund, and thus on the Fund's purpose and utility.

Imposition of a new, numbers-only based contribution mechanism is fraught with similar problems, but also with an overlay of real, measurable economic harm to certain categories of businesses. Among the critical issues raised by a numbers based contribution mechanism, each of which would need to be examined and resolved prior to implementation, are: 1) the wireless safe harbor; 2) the inclusion of VoIP service revenues in the contribution base; 3) connections to the network that do not have numbers associated with them, such as stand-alone broadband and private line data services; and, 4) the exclusion of interexchange services from the contribution base.[42] Moreover, as has been noted by various parties in ex parte submissions to the Commission in the above-referenced dockets, a shift from a revenues-based to a numbers-based contribution system would inappropriately, and disproportionately, burden end users that have a heavy dependence on numbering resources, such as hospitals, universities, and government agencies.[43]

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[42] *See e.g.*, Letter of Thomas Jones, Counsel, TWTC and One Communications, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 *et al*., at 17-19 (filed Oct. 28, 2008); Ex Parte Presentation at 3, attached to Letter of Thomas Jones, Counsel, TWTC, One Communications and Integra Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, CC Dkt. Nos. 01-92 *et al.*, (filed Oct. 23, 2008), noting that reducing the per number contribution from one dollar to $.85 would be insufficient to address the problem.

[43] *See e.g.*, Letter of Thomas Jones, Counsel, TWTC and One Communications, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 01-92 *et al*., at 16-17 (filed Oct. 14, 2008). Ex Parte Presentation at 11,

Taken as a whole, the Commission's proposals, and industry proposals such as those submitted by Verizon and AT&T, whether hybrids or pure numbers-based, stand to toss the entire USF funding system into turmoil, creating as yet unquantified costs and burdens on service providers and end users alike, to say nothing of the possible additional burden on the Commission to implement, administer, and police the new contribution system.

Finally, with respect to the USF itself, and the uses to which its funds are put, there are certain principles Integra believes the FCC should observe if adopting system reforms. First, if the FCC adopts any reduction in access charges, or makes any move toward a unified or uniform access charge structure that has the effect of reducing the amount of revenues carriers currently receive via access charges, the Commission must simultaneously increase the amount of the SLC a carrier can charge. Any moves that bring immediate revenue decreases must be balanced by immediate SLC increases in order to mitigate the economic harm that reduced access revenues will no doubt bring.

Second, the USF should not serve as an access recovery fund, and a separate access recovery fund should not be established, unless *all* local exchange carriers, ILEC and CLEC alike, have the same access such a recovery mechanism, and on the same terms. The facts that CLECs are non-dominant and are not subject to the same rate regulation as ILECs are inapposite to the proposition that CLECs are free to charge their end users whatever they see fit to (legally) charge. Rather, the very status of CLECs as non-dominant hails from the fact that CLECs have little or no market power and,

attached to Letter of Genevieve Morelli, Counsel, Broadview Networks, NuVox Communications, and Cavalier Telephone, to Marlene H. Dortch, Secretary, FCC, CC Dkt. Nos. 01-92 *et al.*, (filed Oct. 15, 2008).

therefore, have no ability to charge their end users more than the market will bear. By definition, CLECs are price constrained by the existence of rate regulated, dominant carriers.

Simply because the Commission states that such arguments are "unpersuasive," and points to bundled service offerings, and hypothetical additional or alternative "niche services" that CLECs could be providing, does not and will not prevent the brunt of the economic harm that the FCC's intercarrier compensation reform proposals would wreak from falling on the heads of competitive carriers. As a group, CLECs have no realistic avenue available to them to increase the rates for their services above ILEC service rates. To foreclose them from access to additional funding that will be available to carriers with massive economies of scope and scale who are, not coincidentally, the CLECs' largest competitors, largest wholesale suppliers, and the leading proponents and de facto architects of the FCC's proposals to alter the intercarrier compensation and USF regimes simply further rigs the game against competitive carriers.

V. Conclusion

The CLEC industry, like many of the mid-size carriers, depends on access charges as a critical component of its revenues mix. By and large, CLECs are ineligible for support from the Universal Service Fund, and are almost exclusively limited to increasing end user rates as a means to replace reductions in intercarrier compensation. Innovation and new product development cannot make up for the swift and dramatic declines in intercarrier compensation proposed by the *ICC FNPRM*.

Adoption of many of the FCC's proposed reforms would have a devastating effect on the CLEC industry and consumers by shifting costs from the large integrated carriers that provide wireless and interexchange services to smaller carriers and their customers. Such a shift will result in significant price increases on consumers at the same time as they face increasingly severe conditions in the broader economy. CLECs already are struggling to attract capital on reasonable terms that will permit them to continue to invest in their networks, operations, services, and personnel. Forcing them into a regulatory structure that mandates the provision of services at below cost rates, and requiring that the resulting revenue deficit be recovered entirely through rate increases on end users would be bad public policy at any time, but could be disastrous for carriers and consumers alike at this precarious moment in the country's economic history.

Compounding the harms of the contemplated rate reductions is a "transition plan" under which the FCC effectively proposes a flash cut from one regime to another, cramming the bulk of the rate reductions into the first two years of a ten year time frame. Such an abrupt shift could cause massive marketplace disruptions, exacerbating the economy's instability by introducing an additional industry into the current maelstrom of economic dislocation, and subjecting the telecom industry to deeper effects of the credit market dysfunction than it already is suffering. If the FCC unwisely chooses the path of driving all intrastate and interstate access rates toward a uniform or unified rate, such a move must be done with an eye toward minimizing the harm it will have on carriers' businesses. Key to that effort would be a far more gradual transition where the impacts were not front loaded in the first few years, but more evenly spread out over the entire transition timeframe in order to give carriers on opportunity to properly adjust business plans, a move that would ease the financial burden of the dramatic changes proposed to be made to the current scheme.

In the event that the FCC does act to reform the current intercarrier compensation regime, it should do so in accord with the competitively neutral, economically rational principles outlined herein.

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Respectfully submitted,

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